

MAJOR FACTORS AFFECTING INDIAN JUDICIAL PROCESS

NITUJA SINGH

Ph.D. Research Scholar,
Jamiamilliaislamia,(A Central University),
New Delhi

ABSTRACT

Judicial process is a set of legal procedures to be followed by any judicial system for delivery of justice to anyone whose right is injured in the eyes of court. Generally, judicial process is amounted to be started when the matter of litigation is put on the Bench of judges to deliver adequate justice in pursuance of law, legal theories or doctrines but actually judicial process should be considered to be incepted when a cause of action arises and the victim wants to go to court to seek justice. This is the very moment when the nature and quality of the judicial process plays a pivotal role in encouraging or discouraging to the victim to take the recourse of court seeking grievances. Therefore, the real judicial process starts not when the litigation-matter is put before the Bench but when it is filed in the registry of a particular court and ends with passing of the judgment.

In between the complete procedures, there are many factors that affect directly/indirectly to the judicial process of any judicial system.

The judicial process encompasses many steps/procedures to be followed by the court of law. The established procedures of judicial process of any country talk a lot about the reliance of the people in the particular justice delivery system. The instant paper based on doctrinal method of research, would critically analyse the factors affecting, whether positively or negatively, the judicial process of India and would try to find out a solution to cope up the obstacle coming in the way to the justice during the procedures of judicial process.

Key words: Judicial - Process, Justice, Judiciary, Jurimetrics.

INTRODUCTION

‘Judicial process’ is that very specific legal procedure through which ‘justice’ can be administered by the courts. According to **Blackstone**, “Justice is a reservoir from where the concept of *right, duty* and *equity* evolves.”¹ Thus, the notion of ‘justice’ is the centre point for which courts strive through out to dispense.

Benjamin N. Cardozo says about judicial process that “What is it that I do when I decide a case? To what sources of information do I appeal for guidance? In what proportions do I permit them to contribute to the result? In what proportions ought they to contribute? If a precedent is applicable, when do I refuse to follow it? If no precedent is applicable, how do

¹ .Paranjape, Dr.N.V., Jurisprudence & Legal Theory, Central Law Agency, Allahabad (ed.Vth), 2008, P.164.(3)

I reach the rule that will make a precedent for the future? If I am seeking logical consistency, the symmetry of the legal structure, how far shall I seek it? At what point shall the quest be halted by some discrepant custom, by some consideration of the social welfare, by my own or the common standards of justice and morals”?² Meaning thereby that whatever a judge has to do to deliver a judgment, is the judicial process. It is the soundness of judicial process upon which the legality of the judge – made – law depends. In other words, judicial process is a mean to attain the end i.e. justice.

Actually, judicial process is the method of attaining justice which seeks to achieve desirables and to prohibit undesirables.³ It basically confines itself to the study of “is” of law in the light of fact or dispute in hand and if the ‘is’ of law is not clear, judges move to “ought” of the law in the light of the objectives of the legislature and the concerned statute itself.⁴

The Preamble of the Constitution of India proclaims to ensure justice (Social, Economic and political), liberty (of thought, expression, belief, faith and worship) and equality of status and opportunity to every citizen of India. The Constitution of India provides various fundamental and legal rights. And, the judiciary of India has been made the very custodian of the said sureties and protector of such rights by the Constitution itself. The Constitution guides to the judiciary of India that which kind of judicial process has to be adopted for various kinds of litigation.

The judicial process of Indian judiciary is a bit technical and that's why not easily accessible for a common man. Even after 70 years of independence, the Indian judiciary is carrying on the judicial process set by the British India and henceforth, many flaws have turned into hindrances to the path of justice while the same time, there are many aspects that prove the judicial process of Indian judiciary more scientific and systematic.

The Indian judiciary is layered at three levels i.e. lower, higher and Supreme Court and at all levels it follows the adversary judicial process. There are various positive characteristics of the adversary judicial process but at the same time in the lack of good administration and vigilance, there are many flaws of this judicial process.

FACTORS AFFECTING JUDICIAL PROCESS – POSITIVELY

Separation of Powers

Article 50 of the Constitution of India talks about the separation of judiciary from executive. It says that the State shall take steps to separate the judiciary from the executive in the public services of the State. The notion behind the incorporation of this Article is that each organ of the government can work freely without unreasonable interference of the other. The constitution of India empowers Indian judiciary only to interpret the laws

² .Cardozo, Benjamin N., (1921), *The Nature of Judicial Process*, pp.1-2

³ . Patel, A. *Indian Judicial Process : A critique*. <http://www.lawyersclubindia.com/articles/Indian-Judicial-Process-A-Critique> visited on 12/04/13

⁴.Id.

enacted by the Indian legislature. It makes Indian judiciary focused in its functioning and unbiased in the eyes of public that boasts its judicial reliability. The exclusive domain of working of the Indian judiciary makes its judicial process smoother and speedy.

Judicial Activism

Under Article 13, 14, 19, 21, 32 and 226 of the constitution of India the Supreme Court and the High Court respectively have been bestowed with immense judicial power. The judiciary has to be judicially proactive if other constitutional body of the government fails to respond their constitutional duty or there is legislative vacuum in the changing society. The higher judiciary of India can play the role of a judicial activist by liberating the strict judicial process of the locus standi and many others. The Most of Indian laws are yet of British India period but it has been the higher judiciary of India who by judicial activism has been administering due justice that vary in different aspect viz. interpretation of the constitution, while protecting the fundamental rights as in the case of *KeshwanandBharati*⁵, etc. extending the scope of —Locus Standi in Public Interest Litigation like *Vellore Citizen Welfare Forum*⁶, *Vishakha Vs. State of Rajasthan*⁷, *NALSA Vs. UOI*⁸, *ShabnamHashami Vs. Union of India*⁹ etc. or suo moto cognizance of more sensitive cases relating to fundamental rights like *Sunil Batra Case*¹⁰, Omni presence of judicial review, expansion of horizons of Article 21 viz. *Sheila Varse*¹¹, *Rudal Shah*¹², *NilabatiBeheras Vs. State of Orissa*,¹³ *Mithu Vs. State of Punjab*¹⁴ *M.C. Mehta Vs. Union of India*¹⁵, *Olga Tellis Vs. Bombay Municipal Corporation*,¹⁶ *Hussainara Vs. Home Secretary, State of Bihar*¹⁷ etc. and guarding certain directive principles of State as fundamental rights, etc.

Disciplined Judiciary

Because of the separation of powers Indian judiciary is highly disciplined. The most important thing Indian judiciary has been conferred certain powers to make some rules for its own working and since the Indian judiciary is run by skilled legal professionals, they make judiciously sound rules that move Indian judiciary in a right direction.

⁵ . *KeshwanandBharati Vs. State of Kerela* , AIR 1973 SC 1461

⁶ . *Vellore Citizen Welfare Forum Vs. Union of India*, (1996) 5 SCC 650

⁷ . *Vishakha Vs. State of Rajasthan*, AIR 1997 SC 3014

⁸ . (2014) 5 SCC 438

⁹ .(2014) 4 SCC 1

¹⁰ . *Sunil Batra Vs. Delhi Administration*, AIR 1978 SC 1675

¹¹ . *SheelaBarseVs State Of Maharashtra*, (1997) 4 SCC 373

¹² . *RudulSahVs State Of Bihar And Another*, (1983) 4 SCC 141

¹³ .(1993) 2 SCC 746

¹⁴ .AIR 1983 SC 473

¹⁵ . (1997) 3 SCC 715

¹⁶ . AIR 1986 SC 180

¹⁷ . AIR 1979 SC 1369

Lack of Biasness

Nemojudex in causasua (no one should be made a judge in his own cause) popularly known as the “rule against bias” has been considered as a part of Indian judicial process because it is the minimum requirement for natural justice in any judicial system. The judge presiding over the bench to hear the litigation must be supposed to be impartial, acting fairly. The objective is to ensure litigants’ confidence in the impartiality of the court and fairness of the judicial process. The Indian judicial process is quite unbiased because there is less political nexus with the judiciary because of the application of the doctrine of ‘Separation of Powers’ and ‘Rule of Law’ by the Indian judiciary.

Less Political Interference

Since the Constitution of India keeps judiciary separate from other organs of the Government, the Indian judiciary is apparently intact from any kind of political nexus. The judges are selected on the merit list of written and *viva voce* tests at the lower judiciary level, so there is less chance of political influence. Every judge of the Supreme Court is appointed by the president after consultation with the Chief Justice of India [Article 124(2)] and in the case of high court judges, chief justice of the concerned High Court and the Governor of the State [Article 217(1)] as well.

But, after the judgement of *In re Presidential Reference*¹⁸ case, the Supreme Court held that in regard to the appointment of judges to the SC under Art. 124(2), the Chief Justice of India should consult “a collegium of four senior most judges of the SC” and in regard to the appointment of HC judges, the court held that the collegium should consist of the Chief Justice of India and any two senior most judges of the SC. Further, in regard to transfer of HC Judges the court held that in addition to the collegium of four judges, the chief justice of India is required to consult chief justice of the two HCs (one from which the judge is being transferred and other receiving him).

FACTORS AFFECTING JUDICIAL PROCESS – NEGATIVELY

Socio-economic background of judges

Though the judges under the Indian Judicial process are supposed to be objective but it's unfortunate for Indian judiciary that judges have been found personally involved in the matter in hand and so the judgement passed in such a matter are influenced by the personal interest of the presiding judge.

The Logo of Supreme Court of India is inscribed with in Devnagari script “*YatoDharmastatoJayah*”. Here *Dharma* may be corresponded to the ‘supreme law of the land’ and *Jayah* means ‘victory’. So, the very vision of the Indian jurists may be inferred from the logo of the Supreme Court when it says *YatoDharmastatoJayah*, it intends to say that people dealing with law must strive for the victory of law and here victory of law can prevail only if the implementation of law is observed objectively. The logo of the Supreme

¹⁸ . AIR 1999 SC 1.

Court of India corresponds to the doctrine of the Rule of Law popularised by A.V.Dicey. The basic tenets of the Rule of law are ‘no one is above the law, Equality before the law and the Bench must be impersonal and impartial’. The corruption charges against judges like K.Veerawami¹⁹, V.Ramaswami²⁰, K.G.Balakrishnan²¹, NirmalYadav²², InderjitMohanty and Sangam Kumar Sahoo²³, SoumitraSen²⁴, RachanaTiwariLakhanpal²⁵ civil Judge, Tis Hazari Court, Delhi, etc. is rather dismay for the dignity of the Indian judiciary. Many times judges are biased to a particular class of people, viz. the statement of the Bombay High Court judge, while granting bail to three accused of murder of Mohsin Sheikh, is highly relevant to prove the personal biasness of the judge presiding over the Bench. The reliance of people to Indian judiciary has shattered because of in and out corruption stories of the judges at all levels. Now this is the scene that the judgements of each and every high profile political, socio-economic cases are seen with dubious mind. People try to look into the connection between the judgment-debtor and the judge passing the judgment and this is the sign of the decline of people towards the judiciary.

Litigation-Cost

The Indian judicial process is comparatively costly. It is costly firstly because the laws dealing with advocacy is not specific about the fee of the private-practitioners and secondly because the court-fee is equal for all irrespective of the income of the litigants. The government does not use systematic, scientific and transparent mechanism for imposition of court-fees. That is the reason that justice is cheaper for the rich but insurmountable for the poor.

Illiteracy and Poverty

Though as per the 2011 census the literacy rate of India is 74.04 per cent but the truth is different. It’s a matter of fact that corruption in the education and examination systems of India is open secret. The actual rate of illiteracy is higher than the rate recorded by the census. So, because of illiteracy people in India are not aware about their legal grievances, the legal process how to seek justice, the judicial process where they can initiate due legal action. Illiteracy is the major factor behind the poverty of any society. Most of the legally-injured people in India could not access to the court because of their financial incapability. They do not have resources either to hire an advocate or to pay court fees. In such a situation to say ‘justice to all’ is just a myth.

¹⁹ .1991 SCC (3) 655

²⁰ .1992 (4) SCC 506

²¹ . <http://www.dailymail.co.uk/indiahome/indianews/article-2100640/Former-Chief-Judge-K-G-Balakrishnan-faces-Supreme-Court-heat-corruption-charges.html> visited on 10/10/17

²² . <http://www.thehindu.com/news/national/other-states/charges-framed-against-nirmal-yadav-in-cashatjudgesdoor-scam/article5589736.ece> visited on 10/10/17

²³ . <https://barandbench.com/corruption-orissa-hc-judges-stalled/> visited on 10/10/17

²⁴ . <https://timesofindia.indiatimes.com/india/Justice-Soumitra-Sen-impeached-by-Rajya-Sabha-on-corruption-charges/articleshow/9649995.cms> visited on 10/10/17

²⁵ . <http://indianexpress.com/article/india/india-news-india/senior-civil-judge-rachna-tiwari-lakhanpal-arrest-cbi-bribery-charges-case-3056493/> visited on 10/10/17

Delay in Justice

‘Justice Delayed is Justice Denied’ is a legal maxim. But, in India it is common. There are many reasons causing delay in justice delivery. The major reason is the lack of will of the government. In all governments there have always been enough resources for various scams but not for recruitment of judiciary. The other reason behind delayed-justice delivery is the corruption and lack of professionalism in the police-system. The judiciary depends on police for the investigation of the facts in dispute and the police bargains with the truth, distorts the actual evidences, manipulates the facts, and intentionally stretches the investigation-time causing delay in the court procedure. The ‘Prison Statistics India 2015’ report says that sixty-seven per cent of the people in Indian jails are under-trials — people not convicted of any crime and currently on trial in a court of law.²⁶ There are many cases wherein people (Nisar-ud-din Ahmad with two others acquitted by the SC of all charges after 23 years in jail²⁷, Gulzar Ahmed Wani²⁸ has been acquitted after 16 years in jail, Mohammad Aamir Khan acquitted after 14 years in jail²⁹, in 2005 Hyderabad suicide blasts, ten prisoners declared innocent after 12 years in jail³⁰), and many more. These are just few, the actual data would be more and more. This is the reason that despite of the knowledge of infringement of the legal rights, people either don’t want to take resort of the judicial process or to settle down the matter out of the court compromising with their interest.

Lack of legal literacy

In the lack of legal education, people do not know their legal rights and duties. Because of legal illiteracy people do not get to claim their due either from the State or from the person/s injuring their rights. Legal-illiteracy is the major cause behind the exploitation by the police, government machineries, employers, socially superior class of people and relationships.

Legal-political nexus

It is the most apparent cause of corruption in the Indian judiciary, especially in the higher judiciary and so it affects badly to the sanctity of the whole judicial process of India. Bar-members are not debarred from joining politics. Indian judiciary selects certain number of judges from the Bar. When advocates having a political connection are got selected for the Bench, judgments passed by them seems to be biased. There are bunch of such cases in the history of the Indian judiciary wherein the order, judgment or opinion of

²⁶ . <http://www.thehindu.com/news/national/%E2%80%98Two-thirds-of-prisoners-in-India-are-undertrials%E2%80%99/article16080519.ece> retrieved on 15/11/17.

²⁷ . <http://indianexpress.com/article/india/india-news-india/babri-masjid-demolition-train-blast-tada-supreme-court-acquitted-in-babri-anniversary-train-blasts-case-nisar-2824883/> retrieved on 15/11/17.

²⁸ . <https://thewire.in/140512/gulzar-wani-acquitted-terror-cases/> retrieved on 15/11/17.

²⁹ . <http://www.hindustantimes.com/analysis/framed-as-a-terrorist-mohammad-aamir-khan-s-14-years-behind-the-bars/story-TJnysSHMj0yCj8yXf15lrN.html> retrieved on 15/11/17

³⁰ . <https://sabrangindia.in/article/2005-hyderabad-suicide-blasts-ten-muslims-declared-innocent-after-12-years-jail-surprise> retrieved on 15/11/17

a particular judge shows allegiance to the government or to the individual having political background. In return they get benefits from them. For example, in the independent India whenever the integrity of a judge is questioned in the Parliament, such a judge is indirectly protected by one or more political party, viz. the impeachment process in the matter of Justice SoumitraSen, .C.V. NagarjunaReddy . P.D Dinakaran, J.B. Pardiwala, and V. Ramaswami could not succeed because of the judicial-political nexus and this is really a matter of dismay for Indian Judiciary.

Overburdened judiciary

Indian judiciary is one of the most overburdened judiciary in the world. India has more than 22m legal cases pending, 6m of which have been stuck in the courts for five years or longer. (The Supreme Court nevertheless deals with 47,000 cases a year; America's dismisses 8,000 a year and hears only about 80.)³¹

To manage the huge caseload India has only 16,000 courtrooms and barely as many working judges—14 of them per million people compared with 107 in America. As far back as 1987 a government-advisory body, the Law Commission of India, recommended a fivefold increase in the number of judges. That target has not remotely been reached.³²

No need to say that on this point there is complete absence of the executive's motive in improvement of the quality and speedy justice delivery to people.

Lack of professionalism

Now a day there is flux of private and deemed universities in India. They are ready to compromise with anything for money. Neither they are meeting the standard of teaching staffs nor the minimum qualification for admission in any particular course. From such institutions lacs and lacs law degree holders are coming each year in the court campuses for practicing law. Such people are just creating the crowded in the profession. They lack professionalism and it really jeopardises the judicial process of India, especially it slowdown the speed of the court process and justice delivery.

Judicial vacancies

Indian judiciary can be quoted as “the judiciary producing maximum work with minimal manpower.” The population of the country is growing, so number of litigation is increasing day by day. But, it seems that the executive of India and all States intentionally ignoring the pathetic condition of the Indian judiciary and the disappointing condition of the speed of the justice delivery. It is common from lower to Supreme Court’s judicial process that it is overburdened with work because required vacancies are not filled.

³¹ . <https://www.economist.com/news/asia/21699156-overburdened-yet-overactive-indias-courts-are-failing-do-justice-dropping-scales> retrieved on 19/11/17

³² . Ibid.

Open-ended Laws

The judgment of the court depends on the judicial process followed by a particular judicial system. Indian judicial system is adversarial. Courts have to interpret the written text of law in the context of litigation in hand. Sometimes the text of statutes is mandatory while other times it may be directory or permissive statute that leaves open space for the court to pass an order/judgment decree in the disputed- matter as per their discretion wherein the court is supposed to apply their judicious mind. When the court is given discretionary power, if the concerned Statute is silent whether the court is bound to pass a speaking order, the court generally pass a non-speaking order. Such kind of open-ended-laws that leaves space for the judiciary to apply their discretion, are one of the major factors behind the corruption in Indian judiciary. In such a situation where judges have not to explain the reason in support of their judgments/order/decrees, they easily sell justice in favour of the person who is capable enough to pay an exorbitant amount and thus such open-ended-laws breed corruption, shatters the integrity and dignity of the judiciary and shakes the trust of people who looks with a great and last hope towards the judiciary. Most of times, the corruption in judiciary keeps the real victim away from judicial process because they think justice can not be sought, it is sold in the premises of the judicial courts.

Jurimetrics

Justice Holmes asserted that an ideal system of law should draw its postulates and its legislative justification from science.³³ So far as Indian judicial process is concerned it's highly theoretical. Generally, the Indian legislature does not go through a proper research process before enacting a particular law. Neither it always sets up a professional, specialised and skilled committee to suggest or recommend its expert opinion in connection with a particular law. If ever committee is set up, their reports are not implemented years and years and thus it loses its value if implemented after a decade because society is dynamic. The condition and circumstances of the social-fact do change day by day.

Judges are also recruited only after their graduation wherein they are not inculcated with the research aptitude. They have only theoretical knowledge of law and under moot court practices they are trained how to draft legal documents, how to cite relevant laws in the litigation but they are not empowered with the skill of research so that during their legal practices they can collect data during their law-practices from litigants, court-visitors so that it can be analysed and applied to solve a particular type of litigation by the legal professionals or by the legislature before enacting/amending any particular law.

Moreover, law has connectivity with other discipline life like medical science, psychology, technology, sociology, social-sciences, etc. But, the people presiding over the Bench under Indian judicial process are only from legal profession. When a witness comes in the dock to corroborate the evidence, there is none specialist in the Bench to cross the

³³ . OLIVER W. HOLMES, Learning and Science,'speech delivered at a dinner of the Harvard Law School Association, June 25, 1895, reprinted in COLLECTED LEGAL PAPERS 138 (1920).

witness hailing from other profession, especially when it relates to technology or any other pure science. In such a situation witness may misguide the court or the court may not cross-verify the witness in the proper way to find out the needful information because it is the advocate who communicate, verify or cross - verify to the witness while the advocate has only legal knowledge. Therefore, for a highly professional and scientific judicial process, it is expedient to have a specific expert professional, dealing with other than law, in the Bench.

CONCLUSION

The judicial process of India needs overhaul retrospection from very beginning. It was established by Britishers mostly keeping in mind their own interest and convenient. Now, it should be reset in such a way that even the utmost downtrodden person of society can think to approach to the courts or even the Supreme Court of India in case injustice is caused with them. For this matter, firstly the judicial process should be transparent and then so cheap for poor that they can not be deprived from justice in the lack of court-fee or advocate-fee but so dear for rich that they can not exploit the precious time of courts.

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